Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. Section 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., a Rural Telephone Company	))))))	

To: Chief, Wireline Competition Bureau

Reply Comments of N.E. Colorado Cellular, Inc.

N.E. Colorado Cellular ("NECC"), by counsel, hereby submits the following Reply Comments pursuant to the Commission's Public Notice in the above captioned proceeding.[1] CenturyTel of Eagle, Inc. ("CenturyTel") filed comments.

I. Introduction

CenturyTel has raised no issue of importance that would justify a delay or denial of the petition by the Colorado Public Utilities Commission ("CPUC") for agreement by the FCC to redefine CenturyTel's service area at the individual wire center level. The proposal to reclassify each CenturyTel as a separate wire center will promote competitive entry and is consistent with the Commission's goal of preserving universal service. Moreover, CenturyTel has inappropriately raised a host of complaints -- mostly recognizable as its standard attack against the provisions of the

[1] The Colorado Public Utilities Commission Petitions to Redefine the Service Area of CenturyTel of Eagle, Inc. in the State of Colorado, *Public Notice*, DA 02-2087 (Aug. 26, 2002).

Act and the FCC's rules that seek to ensure competitive neutrality -- having little to do with the discrete issue of service area redefinition that is the subject of the CPUC's Petition. Because the Petition will preserve and advance universal service, ensure consumer choice in rural areas, and serve the public interest, the Commission should concur with the CPUC's proposed service area definition and grant the Petition without delay.

II. The CPUC's Proposed Redefinition Is Consistent With the Act and the FCC's Rules

When Congress enacted the Telecommunications Act of 1996 ("Act"),[2] it specifically commanded the FCC to establish a "pro-competitive, de-regulatory national policy framework" designed to accelerate the deployment of advanced telecommunications to all Americans. In its rulemaking proceedings to establish a system of universal service support mechanisms in furtherance of this Congressional mandate, the FCC used the principle of competitive and technological neutrality as its guide.[3]

Commercial mobile radio service ("CMRS") providers like NECC are restricted to serving those areas within their FCC-authorized Cellular Geographic Service Area ("CGSA"), which generally does not correspond to the rural LEC study area boundaries. Thus, when a CMRS carrier serving customers within a rural LEC study area seeks designation as an ETC, it cannot be

---

2 Pub. L. No. 104-104, 110 Stat. 56 (1996). The Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

3 *See generally,* CC Docket No. 96-45; *see also, Notice of Proposed Rulemaking and Order Establishing Joint Board,* 11 FCC Rcd 18092 (1996); *Federal-State Joint Board on Universal Service, Report and Order,* 12 FCC Rcd 8776 (1997) ("*First Report and Order*"); *Ninth Report and Order and Eighteenth Order on Reconsideration,* 14 FCC Rcd 20432 (1999) ("*Ninth Report and Order*"); *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) ("*Fourteenth Report and Order*").

designated, and therefore cannot receive any high-cost support, unless the state and the FCC agree to redefine the affected rural LEC's service area. In fact, if such service area redefinition does not occur, CMRS carriers will be effectively precluded from competing in those areas solely because of the technology they use. In order to address this potential barrier to competitive entry, the Act envisions the designation of a competitive ETC's service area along boundaries that are not identical to LEC wire center boundaries.[4]

The CPUC's Petition properly seeks to redefine CenturyTel's service area in a competitively neutral manner. As the CPUC noted in its Petition:

> [M]aintaining CenturyTel's rural service area in a multiple, non-contiguous exchange configuration, in effect, precludes potential competitive providers from seeking ETC designation even for areas where those companies can provide service, and can meet all other requirements for designation as an ETC. CenturyTel will receive universal service support, but competitive providers will not. This circumstance is a barrier to entry.[5]

By redefining the service area along wire center boundaries, the FCC and the CPUC will thus remove the last obstacle facing competitive carriers seeking to provide consumers in CenturyTel's service area with high-quality service and an array of pricing plans as a real competitive alternative

---

[4] *See* Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. on Tribal Lands Within the State of Arizona, DA 01-409 (rel. Feb. 15, 2001) (effective date May 16, 2002); *First Report and Order, supra,* 12 FCC Rcd at 8879-80 ("...if a state adopts a service area that is simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage.").

[5] Petition at p. 12.

to LEC service. CPUC's proposal thus will serve the public interest and should be granted expeditiously.

III. The Proposed Service Area Redefinition Will Preserve Universal Service.

As NECC understands it, CenturyTel objects because it filed with the CPUC a self-certification under Path 3 disaggregating support down to two zones and now the CPUC is proposing to redefine service areas at the individual wire center level. CenturyTel's argument that the CPUC's action will promote cream skimming is a red herring for several reasons.

Neither the Act nor the FCC's rules require a service area defined for ETC designation purposes required to match the level of disaggregation selected by the affected LEC.

More important, permitting the proposed service area redefinition to become effective in the course of this proceeding, governed by Section 54.207(b), does not change the way that CenturyTel calculates its costs, submits its costs, or the way in which NECC receives support. In other words, NECC will file its line counts and collect support in the same manner and amounts, irrespective of whether CenturyTel's *service area* is two non-contiguous areas or 53 separate areas based on wire center boundaries. Any concerns about cream skimming that CenturyTel now raises could easily have been mitigated by filing a Path 3 disaggregation plan on or before May 15, 2002 that specified 53 separate service areas. CenturyTel literally had years to plan for its filing and understood full well that NECC was seeking competitive entry.

Finally, NECC will not be able to cream skim for two reasons: First, NECC understands the rules in Colorado, the CPUC can require on its own motion modifications to the disaggregation and targeting of support that a carrier selects when it files a Path 3 disaggregation plan. See, 4 C.C.R. 723-42-10.3.5. NECC also understands that the CPUC uses plans of disaggregation to determine service areas for purposes of competitive entry. 4 C.C.R. 723-42-11. Thus, if CenturyTel is unhappy that the CPUC intends to disaggregate its support beyond what was proposed in CenturyTel's Path 3 plan, its appropriate avenue of redress is at the CPUC, not here in a *service area* definition proceeding. Again, nothing in this proceeding affects how CenturyTel's support is disaggregated. Second, CenturyTel presumes that a competitor such as NECC possesses CenturyTel's network cost information such that it could pick the most profitable exchanges to serve. This is not possible because neither NECC nor any other competitor has sufficient knowledge of CenturyTel's cost data to enable it to engage in the kind of arbitrage CenturyTel purports to fear.

Unstated in CenturyTel's comments is the fact that its position, if applied across the country, would artificially inflate universal service payments to competitive ETCs. From NECC's point of view, one of the most vexing problems arising out of the Commission's Fourteenth Report and Order is the fact that ILECs have largely ignored the Commission's call to disaggregate support so as to preserve universal service. Concerned about aiding competitive entry, roughly 90% of the rural ILECs chose Path 1. Others, such as CenturyTel, disaggregated into large service areas, so as to minimize the competitive entry and permit them to argue that such entry would promote cream skimming.

NECC believes that choosing Path 1 disaggregation, or resisting disaggregation to the wire center level, especially where costs are obvious and available, undermines the FCC's goal of preserving universal service. To the extent that CenturyTel or any carrier refuses to disaggregate, it creates the potential for a competitive carrier to receive more support than it should in low cost wire centers, which NECC does not support.

With the benefit of hindsight, it now appears that the FCC should have required ILEC service area to be immediately redefined so that each wire center is a separate service area and support disaggregated on the same level, once a CETC enters the market. With support more accurately allocated to each wire center, a competitor can choose to serve any combination of wire centers without creating the possibility for cream skimming. This is precisely what the CPUC intends to do here and NECC endorses it, even if the result is NECC receiving less high-cost support.[6] CenturyTel's plea for "consistency" runs counter to both settled law and policy promoting competitive entry while preserving universal service support.

IV. CenturyTel's Disaggregation Filings Have Mooted the Cream Skimming Issue

As both the FCC and the CPUC have emphasized, the opportunity by LECs to file disaggregation plans should lay to rest any concerns regarding the potential for cream skimming by a competitor.[7] Nonetheless, CenturyTel argues that a competitor will engage in cream skimming if its proposed service area does not match exactly that of the incumbent LEC. Since CenturyTel, like

---

[6] What NECC does not support is an ILEC disaggregating support in an anticompetitive manner so as to artificially reduce support in high-cost areas where NECC serves, and moving it to other, potentially lower cost areas where NECC does not serve. See NECC's challenge to the Path 2 disaggregation plan submitted by the Wiggins Telephone Association in Docket 02A-276T.

[7] *See Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporations' Designation as an Eligible Telecommunications Carrier in the State of Wyoming, Order on Reconsideration,* CC Docket No. 96-45, FCC 01-311 at ¶ 12 (rel. Oct. 19, 2001); In the Matter of the Proposed Amendments to the Rules Concerning the Colorado High Cost Support Mechanism, 4 CCR 723-41, and the Rules Concerning Eligible Telecommunications Carriers, 4 CCR 723-42, Ruling on Exceptions and Order Vacating Stay at pp. 14-15 (CPUC, mailed Mar. 18, 2002).

all other rural LECs, has had an opportunity to disaggregate high-cost support, CenturyTel's attempt to reverse FCC and Colorado policy should be rejected.

NECC is not aware of, and CenturyTel does not cite, any law or rule mandating that the service areas of an incumbent and its competitor must be identical to avoid cream skimming. The cream skimming issue is merely one of several factors the Federal-State Joint Board on Universal Service ("Joint Board") advised the states and the FCC to consider when defining an ETC's service area along boundaries that differ from the incumbent LEC's. Far from presuming that cream skimming will result, the FCC's analytical framework expressly contemplates the designation of a competitive ETC along boundaries that differ from a LEC's service area, so long as the facts indicate that cream skimming and other factors will not be a concern.

CenturyTel's recent actions have dispelled any notion of the potential for cream skimming by competitors in its service area. In May 2002, CenturyTel chose to file a plan for the disaggregation of high-cost support under Path 3 of the FCC's rules. CenturyTel acknowledges in its comments that:

> Although CenturyTel was able to calculate relative cost down to the wire center, which is the same as the individual exchange, support was established based on two support zones – not 53.[8]

CenturyTel portrays itself as a victim, suggesting that its competitors may try to take advantage of support that is averaged across an entire zone.[9] However, it was CenturyTel's deliberate choice to forgo using its available wire center cost data and establish those wider support zones. If CenturyTel

---

[8] CenturyTel Comments at p. 4.

[9] *See id.* at p. 5.

were truly concerned that competitors might be tempted to target low-cost areas to receive higher levels of support averaged across a broader area, it could easily have filed a plan disaggregating support down to the wire center level. Since CenturyTel chose not to do so, it must not have been concerned about cream skimming, and it cannot credibly claim to be concerned about it now. Thankfully, the CPUC is concerned, and NECC fully supports disaggregation of CenturyTel's support to the wire center level.

V. CenturyTel's Remaining Concerns Are Not At Issue In This Proceeding, But In Any Event Must Be Rejected

CenturyTel raises a litany of minor issues that extend well beyond the scope of the CPUC's Petition. This is no accident; CenturyTel appears intent upon seizing any and every proceeding concerning competitive ETCs to advance its agenda of keeping competitors from breaking its monopoly on high-cost support.[10] To the extent CenturyTel wishes to roll back the provisions of the Act and the FCC's rules that ensure competitive neutrality and sufficiency of support, such arguments — however misguided — are best raised in future FCC proceedings to refine its rural universal service policies. Nonetheless, NECC briefly responds to CenturyTel's policy arguments below.

A. Use of Incumbent LEC Costs to Calculate Support for Competitors

CenturyTel complains that it is unfair for a competitive ETC to be paid on an incumbent's costs, claiming that a CETC's costs are lower and therefore windfall support is being provided under

---

[10] *See Petition for Rulemaking to Define "Captured" and "New" Subscriber Lines for Purposes of Receiving Universal Service Support, Pursuant to 47 C.F.R. § 54.307 et seq.*, RM No. 10522, Comments of CenturyTel, Inc. (filed Sept. 23, 2002).

the current system.[11] CenturyTel conveniently ignores the fact that if most competitive ETCs were paid on their own costs, they would be collecting more support than they are under the current program. Indeed, CenturyTel claims there is "demonstrable evidence that wireless CETCs' actual costs are lower than wireline carriers" without being able to cite a single source.[12] In almost all instances and for any given area, the competitive ETC has fewer lines than the incumbent over which to spread its costs. Moreover, a competitive ETC is not nearly as far along as an incumbent LEC in constructing its network to provide service throughout its service area. Thus, the initial outlays, to improve network facilities, are much greater at the outset, meaning that competitive ETCs may not obtain sufficient support when they begin to carry out their ETC obligations. CenturyTel also ignores the substantial implicit support it continues to receive which is not portable to NECC> Finally, as discussed above, if a competitive ETC is receiving significant high-cost support in a low-cost area, the fault lies with the ILEC, who has failed to disaggregate support to more accurately target high-cost support and remove it from low-cost areas.

B. Mobility

In its comments, CenturyTel expresses concern about the identification of the service area for a mobile customer for purposes of determining the applicable rate of high-cost support and that mobile telephone usage may result in the use of high-cost funds "to serve customers where such

---

11 *See* CenturyTel Comments at pp. 7-8.

12 *Id.* at p. 8.

support is not needed . . . unless certain protections are put into place."[13] Put simply, this issue has already been squarely addressed by the FCC and several states.

As acknowledged by CenturyTel, the FCC's universal service rules state that carriers providing mobile wireless service in an incumbent LEC's service territory "shall use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area."[14] Moreover, the Rural Task Force and the FCC have specifically addressed the very concerns raised by CenturyTel in holding that "a mobile wireless customer's billing address is a reasonable surrogate for the customer's location."[15] Despite this clear guidance on the billing location issue, CenturyTel would have the FCC reverse its established ETC designation policy in the course of a service area definition proceeding.

The alleged negative effects of using mobile customer billing address as the situs for determining applicable high-cost support levels are simply not grounded in fact. Subscribers, not the universal service fund, pay for all usage outside of NECC's proposed ETC service area. NECC customers who roam into other areas will pay roaming charges to the carrier that provides the service, not to NECC. Such usage is not subsidized. Indeed, despite the incumbent LECs' cautionary pleas, NECC is aware of no state that has placed mobility restrictions on a CMRS carrier

---

13 *Id.* at p. 9.

14 47 C.F.R. § 54.307(b).

15 *Fourteenth Report and Order, supra,* 16 FCC Rcd at 11314-16.

applying for ETC status.[16] Moreover, the FCC has specifically approved several CMRS carriers' applications for ETC status who offered mobile service, without adopting such restrictions.[17]

Finally, even assuming the validity of CenturyTel's concerns, the FCC has already adopted rules to protect against the use of federal universal service support in a manner inconsistent with 47 U.S.C. § 254(e). Specifically, NECC will be required to certify with the FCC that federal universal service support is used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended."[18] The FCC has held that carriers failing to file such certifications will not receive federal universal service support,[19] and those who misuse funds may be subject to enforcement action under Section 208 of the Act. 47 U.S.C. § 208.[20]

CenturyTel's purported concerns about mobility completely ignore NECC's obvious economic incentive to ensure that its customers use phones within the ETC service area, since high-

---

16 CenturyTel is mistaken in its assertion that the New Mexico Public Regulatory Commission ("PRC") declined to include mobility restrictions "without explanation" in its grant of ETC status to Smith Bagley, Inc. *See* CenturyTel Comments at p. 9 n.32. On the contrary, the PRC specifically rejected a limitation on mobility, referencing the Hearing Examiner's discussion of the issue. *See* Smith Bagley, Inc., Utility Case No. 3026, Final Order at para. 5 (N.M. P.R.C. rel. Feb. 19, 2002).

17 *See, e.g., Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, CC Docket No. 96-45, DA 02-1252 (rel. May 24, 2002); *Guam Cellular and Paging, Inc.*, CC Docket No. 96-45, DA 02-174 (rel. Jan. 25, 2002); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming,* 16 FCC Rcd 48 (2000), *aff'd,* 24 CR 1216 (rel. Oct. 19, 2001).

18 *See* 47 U.S.C. § 254(c).

19 *See Fourteenth Report and Order, supra,* 16 FCC Rcd at 11317-18.

20 *See id.* at 11319.

cost support must be used within that area. The additional layer of regulation urged by CenturyTel is completely unnecessary and could only serve to keep otherwise qualified companies from offering competitive service.

C. Local Usage

CenturyTel suggests that the FCC require all wireless carriers seeking ETC designation to offer unlimited local minutes in order to satisfy the "local usage" requirement.[21] Such a requirement is neither warranted under the Act nor necessary to "ensure that only service offerings that meet the definition of universal service are supported."[22]

NECC can think of few proposals that would be more anticompetitive. CenturyTel would require wireless ETCs to have their service mimic a LEC's and thus reduce consumer choice. CenturyTel seeks to ignore the benefits of competition and the obvious fact that NECC cannot claim support if customers abandon its network. NECC offers a rate plan with unlimited local minutes, and many other rate plans tailored to the way customers use their phones. Incumbent LECs are well-known for limiting their customers to small local calling areas, causing them to pay intra- and inter-LATA toll charges for many calls which would be included as part of a wireless carrier's local calling plan. Limiting support to plans which offer unlimited local usage would be counterproductive and not competitively neutral.

---

21 *See* CenturyTel Comments at p. 10.

22 *Id.*

V. Conclusion

For the reasons stated above, the FCC should permit the CPUC's Petition to become effective without further action.

Respectfully submitted,

N.E. COLORADO CELLULAR, INC.

By: ______________________
David A. LaFuria
Steven M. Chernoff
Its Attorneys

Lukas, Nace, Gutierrez and Sachs
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 857-3500

September 27, 2002